WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

House Bill No. 4349

(By Delegates Doyle, Campbell, Boggs, Stalnaker, Houston, Anderson and G. White)

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Passed February 24, 2004

In Effect from Passage
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(By Delegates Doyle, Campbell, Boggs, Stalnaker, Houston, Anderson and G. White)

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AN ACT to amend and reenact §11-15-9 of the code of West Virginia, 1931, as amended; to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-15, 11-15B-30, 11-15B-32 and §11-15B-36 of said code; and to amend said code by adding thereto three new sections, designated §11-15B-14a, §11-15B-19 and §11-15B-20, all relating generally to consumers sales and service tax; clarifying that exemption from tax for durable medical goods, mobility enhancing equipment and prosthetic devices purchased with prescription was not intended to be repealed when house bill 3014 was enacted during the two thousand three regular session of the Legislature; deleting language made obsolete when that bill was enacted; making technical corrections in streamlined sales and use tax administration act; updating certain definitions used in that act; providing sourcing rules and definitions for telecommunications services and retail floral sales based on streamlined sales and use tax agreement; clarifying application of hold harmless rule; deleting obsolete language; and specifying effective date.

Be it enacted by the Legislature of West Virginia.
That §11-15-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15B-2, §11-15B-2a, §11-15B-15, 11-15B-30, 11-15B-32 and §11-15B-36 of said code be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §11-15B-14a, §11-15B-19 and §11-15B-20, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(a) Exemptions for which exemption certificate may be issued.—A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the tax commissioner, and deliver it to the vendor of the property or service in the manner required by the tax commissioner. However, the tax commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(1) Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia department of education and the arts, the board of trustees of the university system of West Virginia or the board of directors for colleges located in this state;

(3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: Provided, That the law of the other state provides the same exemption to governmental units or subdivi-
sions of this state and to the United States, including agencies
of federal, state or local governments for distribution in public
welfare or relief work;

(4) Sales of vehicles which are titled by the division of
motor vehicles and which are subject to the tax imposed by
section four, article three, chapter seventeen-a of this code or
like tax;

(5) Sales of property or services to churches which make no
charge whatsoever for the services they render: Provided, That
the exemption granted in this subdivision applies only to
services, equipment, supplies, food for meals and materials
directly used or consumed by these organizations and does not
apply to purchases of gasoline or special fuel;

(6) Sales of tangible personal property or services to a
corporation or organization which has a current registration
certificate issued under article twelve of this chapter, which is
exempt from federal income taxes under Section 501(c)(3) or
(c)(4) of the Internal Revenue Code of 1986, as amended, and
which is:

(A) A church or a convention or association of churches as
defined in Section 170 of the Internal Revenue Code of 1986,
as amended;

(B) An elementary or secondary school which maintains a
regular faculty and curriculum and has a regularly enrolled
body of pupils or students in attendance at the place in this state
where its educational activities are regularly carried on;

(C) A corporation or organization which annually receives
more than one half of its support from any combination of gifts,
grants, direct or indirect charitable contributions or membership
fees;
(D) An organization which has no paid employees and its gross income from fundraisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the girl scouts of the United States of America, the boy scouts of America or the YMCA Indian guide/princess program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(F) For purposes of this subsection:

(i) The term “support” includes, but is not limited to:

(I) Gifts, grants, contributions or membership fees;

(II) Gross receipts from fundraisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;
(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset or the value of an exemption from any federal, state or local tax or any similar benefit;

(ii) The term “charitable contribution” means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

(iii) The term “membership fee” does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The exemption granted in this subdivision applies only to services, equipment, supplies and materials used or consumed in the activities for which the organizations qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her
representative for the owner’s account, the sale, transfer, offer
for sale or delivery not being made in the ordinary course of
repeated and successive transactions of like character by the
owner or on his or her account by the representative: Provided,
That nothing contained in this subdivision may be construed to
prevent an owner who sells, transfers or offers for sale tangible
personal property in an isolated transaction through an auction-
eree from availing himself or herself of the exemption provided
in this subdivision, regardless of where the isolated sale takes
place. The tax commissioner may propose a legislative rule for
promulgation pursuant to article three, chapter twenty-nine-a of
this code which he or she considers necessary for the efficient
administration of this exemption;

(8) Sales of tangible personal property or of any taxable
services rendered for use or consumption in connection with the
commercial production of an agricultural product the ultimate
sale of which is subject to the tax imposed by this article or
which would have been subject to tax under this article: Provided, That sales of tangible personal property and services
to be used or consumed in the construction of or permanent
improvement to real property and sales of gasoline and special
fuel are not exempt: Provided, however, That nails and fencing
may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the
purpose of resale in the form of tangible personal property:
Provided, That sales of gasoline and special fuel by distributors
and importers is taxable except when the sale is to another
distributor for resale: Provided, however, That sales of building
materials or building supplies or other property to any person
engaging in the activity of contracting, as defined in this article,
which is to be installed in, affixed to or incorporated by that
person or his or her agent into any real property, building or
structure is not exempt under this subdivision;
(10) Sales of newspapers when delivered to consumers by route carriers;

(11) Sales of drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes. The amendment to this subdivision shall apply to sales made after the thirty-first day of December, two thousand three;

(12) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

(13) Sales and services performed by day care centers;

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services. For purposes of this subdivision, the term “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fundraisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fundraisers are of limited duration and are held no more than six times during any twelve-month period and “limited duration” means no more than eighty-four consecutive hours: Provided, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than eighty-four consecutive hours at a time, which are held no more than eighteen times in a twelve-month period for the purposes
of this subdivision are considered “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of a like character;

(15) Sales of property or services to a school which has approval from the board of trustees of the university system of West Virginia or the board of directors of the state college system to award degrees, which has its principal campus in this state and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: Provided, That sales of gasoline and special fuel are taxable;

(16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

(17) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days;

(18) Notwithstanding the provisions of section eighteen or eighteen-b of this article or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the tax commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accordance with chapter twenty-nine-a of this code by the tax commissioner;

(19) Any sales of tangible personal property or services purchased and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, et seq., as amended, or with drafts issued through the West
Virginia special supplement food program for women, infants and children codified in 42 U. S. C. §1786;

(20) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

(21) Sales of electronic data processing services and related software: Provided, That, for the purposes of this subdivision, “electronic data processing services” means:

(A) The processing of another’s data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and

(B) Providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(22) Tuition charged for attending educational summer camps;

(23) Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. “Control” means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty
percent or more of the value of the corporation, partnership or
limited liability company;

(24) Food for the following are exempt:

(A) Food purchased or sold by a public or private school,
school-sponsored student organizations or school-sponsored
parent-teacher associations to students enrolled in the school or
to employees of the school during normal school hours; but not
those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or
university or by a student organization officially recognized by
the college or university to students enrolled at the college or
university when the sales are made on a contract basis so that
a fixed price is paid for consumption of food products for a
specific period of time without respect to the amount of food
product actually consumed by the particular individual contract-
ing for the sale and no money is paid at the time the food
product is served or consumed;

(C) Food purchased or sold by a charitable or private
nonprofit organization, a nonprofit organization or a govern-
mental agency under a program to provide food to low-income
persons at or below cost;

(D) Food sold by a charitable or private nonprofit organiza-
tion, a nonprofit organization or a governmental agency under
a program operating in West Virginia for a minimum of five
years to provide food at or below cost to individuals who
perform a minimum of two hours of community service for
each unit of food purchased from the organization;

(E) Food sold in an occasional sale by a charitable or
nonprofit organization, including volunteer fire departments
and rescue squads, if the purpose of the sale is to obtain revenue
(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying out those functions and activities: Provided, That purchases made by the organizations are not exempt as a purchase for resale; or

(G) Food sold by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, when the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(25) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters or other school or athletic booster organizations supporting activities for grades kindergarten through twelve and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: Provided, That the purchases made by the organizations are not exempt as a purchase for resale;

(26) Charges for room and meals by fraternities and sororities to their members: Provided, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;
(27) Sales of or charges for the transportation of passengers in interstate commerce;

(28) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the constitution of this state;

(29) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provision of any other chapter of this code;

(30) Charges for the services of opening and closing a burial lot;

(31) Sales of livestock, poultry or other farm products in their original state by the producer of the livestock, poultry or other farm products or a member of the producer’s immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: Provided, That the exemptions allowed by this subdivision may be claimed without presenting or obtaining exemption certificates provided the farmer maintains adequate records;

(32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the tax commissioner: Provided, That the exemption provided in this subdivision may be claimed by presenting to the seller a properly executed exemption certificate;
(33) Sales of aircraft repair, remodeling and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling or maintenance service and sales of machinery, tools or equipment, directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts, for a certificated or licensed carrier of persons or property, or for a governmental entity;

(34) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(35) Sales of services by individuals who baby-sit for a profit: Provided, That the gross receipts of the individual from the performance of baby-sitting services do not exceed five thousand dollars in a taxable year;

(36) Sales of services by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

(37) Commissions received by a manufacturer’s representative;

(38) Sales of primary opinion research services when:

(A) The services are provided to an out-of-state client;
(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term “primary opinion research” means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly used for quantitative and qualitative opinion research studies;

(39) Sales of property or services to persons within the state when those sales are for the purposes of the production of value-added products: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by those persons engaged solely in the production of value-added products: Provided, however, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;

(B) Fruits into wine;
(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semifinished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned or frozen product;

(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked or frozen product; and

(J) Poultry into a dried, canned, cooked or frozen product;

(40) Sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed three thousand dollars: Provided, That nothing contained herein may be construed to deprive private social gatherings, weddings or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination and skill in the creation of aesthetic
experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses and similar presentations and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television shows or any video or audio taped presentations or the sale or leasing of video or audio tapes, air shows, or any other public meeting, display or show other than those specified herein: Provided, however, That nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in this article. The state tax commissioner shall propose a legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set forth herein: Provided further, That nude dancers or strippers may not be considered as entertainers for the purposes of this exemption;

(41) Charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: Provided, That the association or organization pays the tax imposed by this article
on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(42) Sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

(43) Direct or subscription sales by the division of natural resources of the magazine currently entitled “Wonderful West Virginia” and by the division of culture and history of the magazine currently entitled “Goldenseal” and the journal currently entitled “West Virginia History”;

(44) Sales of soap to be used at car wash facilities;

(45) Commissions received by a travel agency from an out-of-state vendor;

(46) The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia department of environmental protection or the West Virginia bureau for public health or both. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and
state environmental standards includes those costs of tangible personal property directly used in providing such services that are separately billed to the purchaser of such services and on which the tax imposed by this article has previously been paid by the service provider;

(47) Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(48) Lodging franchise fees, including royalties, marketing fees, reservation system fees or other fees assessed after the first day of December, one thousand nine hundred ninety-seven, that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement; and

(49) Sales of the regulation size United States flag and the regulation size West Virginia flag for display.

(b) Refundable exemptions. — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food,
meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel are taxable;

(4) Sales and services, fire fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia: Provided, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter or an emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.
ARTICLE 15B. STREAMLINED SALES AND USE TAX AGREEMENT.


(a) General. — When used in this article and articles fifteen and fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is distinctly expressed or the context in which the term is used clearly indicates that a different meaning is intended by the Legislature.

(b) Terms defined. —

(1) “Agent” means a person appointed by a seller to represent the seller before the member states.

(2) “Agreement” means the streamlined sales and use tax agreement, as defined in section two-a of this article.

(3) “Alcoholic beverages” means beverages that are suitable for human consumption and contain one half of one percent or more of alcohol by volume.

(4) “Certified automated system” or “CAS” means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(5) “Certified service provider” or “CSP” means an agent certified under the agreement to perform all of the seller’s sales tax functions.

(6) “Computer” means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.
(7) “Computer software” means a set of coded instructions designed to cause a “computer” or automatic data processing equipment to perform a task.

(8) “Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

(9) “Delivery charges” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

(10) “Dietary supplement” means any product, other than “tobacco”, intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) A herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract or combination of any ingredient described in subparagraphs (i) through (v), inclusive, of this subdivision;

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is
not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label as required pursuant to 21 CFR §101.36, or in any successor section of the code of federal regulations.

(11) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(12) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans; or

(C) Intended to affect the structure or any function of the human body.
“Durable medical equipment” means equipment including repair and replacement parts for the equipment, but does not include “mobility-enhancing equipment”, which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Entity-based exemption” means an exemption based on who purchases the product or service or who sells the product or service.

“Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic beverages or tobacco.

“Includes” and “including” when used in a definition contained in this article is not considered to exclude other things otherwise within the meaning of the term being defined.

“Lease” includes rental, hire and license. “Lease” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.
(A) “Lease” does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set-up the tangible personal property.

(B) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the uniform commercial code, or other provisions of federal, state or local law.

(19) “Load and leave” means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(20) “Mobility enhancing equipment” means equipment, including repair and replacement parts to the equipment, but does not include “durable medical equipment”, which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;
(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(21) “Model I seller” means a seller that has selected a certified service provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

(22) “Model II seller” means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(23) “Model III seller” means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(24) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

(25) “Personal service” includes those:

(A) Compensated by the payment of wages in the ordinary course of employment; and

(B) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, manicuring and similar services.
(26) “Prescription” means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue prescriptions.

(27) “Prewritten computer software” means “computer software”, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

(A) The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

(B) “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person’s modifications or enhancements.

(C) “Prewritten computer software” or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software: Provided, That where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(28) “Product-based exemption” means an exemption based on the description of the product or service and not based on who purchases the product or service or how the purchaser intends to use the product or service.
(29) “Prosthetic device” means a replacement, corrective, or supportive device, including repair and replacement parts for the device worn on or in the body, to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction of the body; or

(C) Support a weak or deformed portion of the body.

(30) “Protective equipment” means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.

(31) “Purchase price” means the measure subject to the tax imposed by article fifteen or article fifteen-a of this chapter and has the same meaning as sales price.

(32) “Purchaser” means a person to whom a sale of personal property is made or to whom a service is furnished.

(33) “Registered under this agreement” means registration by a seller with the member states under the central registration system provided in article four of the agreement.

(34) “Retail sale” or “sale at retail” means:

(A) Any sale or lease for any purpose other than for resale as tangible personal property, sublease or subrent; and

(B) Any sale of a service other than a service purchased for resale.

(35)(A) “Sales price” means the measure subject to the tax levied by this article and includes the total amount of consideration, including cash, credit, property and services, for which
personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller’s cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges;

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) Credit for the fair market value of any trade-in.

(B) “Sales price” does not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.
(36) “Sales tax” means the tax levied under article fifteen of this chapter.

(37) “Seller” means any person making sales, leases or rentals of personal property or services.

(38) “Service” or “selected service” includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but does not include contracting, personal services, services rendered by an employee to his or her employer, any service rendered for resale, or any service furnished by a business that is subject to the control of the public service commission when the service or the manner in which it is delivered is subject to regulation by the public service commission of this state. The term “service” or “selected service” does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer’s, distributor’s or other third-party’s marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement, and these payments are not considered to be payments for a “service” or “selected service” rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(39) “State” means any state of the United States and the District of Columbia.

(40) “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses. “Tangible personal property” includes, but is not limited to, electricity, water, gas, and prewritten computer software.
(41) “Tax” includes all taxes levied under articles fifteen and fifteen-a of this chapter, and additions to tax, interest and penalties levied under article ten of this chapter.

(42) “Tax commissioner” means the state tax commissioner or his or her delegate. The term “delegate” in the phrase “or his or her delegate”, when used in reference to the tax commissioner, means any officer or employee of the state tax division duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(43) “Taxpayer” means any person liable for the taxes levied by articles fifteen and fifteen-a of this chapter or any additions to tax, penalties imposed by article ten of this chapter.

(44) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(45) “Use tax” means the tax levied under article fifteen-a of this chapter.

(46) “Use-based exemption” means an exemption based on the purchaser’s use of the product or service.

(47) “Vendor” means any person furnishing services taxed by article fifteen or fifteen-a of this chapter, or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this article and in article fifteen and fifteen-a of this chapter.

(c) Additional definitions. — Other terms used in this article are defined in articles fifteen and fifteen-a of this chapter, which definitions are incorporated by reference into this article. Additionally, other sections of this article may
§11-15B-2a. Streamlined sales and use tax agreement defined.

As used in this article and articles fifteen and fifteen-a of this chapter, the term “streamlined sales and use tax agreement” or “agreement” means the agreement adopted the twelfth day of November, two thousand two, by states that enacted authority to engage in multistate discussions similar to that provided in section four of this article, except when the context in which the term is used clearly indicates that a different meaning is intended by the Legislature. “Agreement” includes amendments to the agreement adopted by the implementing states in calendar year two thousand three but does not include any substantive changes in the agreement adopted after the thirty-first day of December, two thousand three.

§11-15B-14a. Application of general sourcing rules and exclusions from the rules.

(a) Sellers shall source the sale of a product in accordance with section fifteen of this article. The provisions of said section apply regardless of the characterization of the product as tangible personal property, custom software, or a service. The provisions of said section only apply to determine a seller’s obligation to pay or collect and remit a sales or use tax with respect to the seller’s sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdiction of that use.

(b) Section fifteen of this article does not apply to sales or use tax levied on telecommunication services as defined in section twenty of this article. Telecommunication services shall be sourced in accordance with section nineteen of this article.

(a) General rule. – For purposes of articles fifteen and fifteen-a of this chapter, the retail sale, excluding lease or rental, of a product shall be sourced as follows:

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser’s designated donee occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(3) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller’s business when use of this address does not constitute bad faith.

(4) When subdivisions (1), (2) and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser’s payment instrument, if no other address is available, provided use of this address does not constitute bad faith.

(5) When none of the previous subdivisions of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, or computer software delivered electronically was first available for transmission by the seller, or from which the service was provided: Provided, That any location that merely provided the digital transfer of the product sold is disregarded for these purposes.
(b) Lease or rental. — The lease or rental of tangible personal property or custom software, other than property identified in subsection (c) or (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location may not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(c) Vehicles.— The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is indicated by
an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(d) Sale or lease or rental of transportation equipment. – The retail sale, including lease or rental, of transportation equipment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section, notwithstanding the exclusion of lease or rental in said subsection. “Transportation equipment” means any of the following:

(1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand pounds or greater, trailers, semitrailers, or passenger buses that are:

(A) Registered through the international registration plan; and

(B) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.
(3) Aircraft that are operated by air carriers authorized and certificated by the U.S. department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3), inclusive, of this subsection.

(e) Exceptions.— Subsections (a) and (b) of this section shall not apply to the following goods or services:

(1) Telecommunications services, as set out in section twenty of this article, shall be sourced in accordance with section nineteen of this article; and

(2) Until the first day of January, two thousand six, a seller who is primarily engaged in the retail sale of cut flowers and flower arrangements taking the original order to sell tangible personal property shall source the sale to the place where order was taken. For purposes of this exception, “primarily” means more than fifty percent of the seller’s total gross sales or receipts are derived from that activity. In determining if a seller is primarily a florist, the total sales price of cut flowers and floral arrangements includes separately stated delivery or service charges. After the thirty-first day of December, two thousand five, sales by florists shall be subject to the general sourcing rules stated in subsection (a) of this section.

(f) Product defined.— As used in subsection (a) of this section, “product” includes tangible personal property, custom software or a service, or any combination thereof.


(a) Except for the defined telecommunication services in subsection (c) of this section, the sale of telecommunication
service sold on a call-by-call basis shall be sourced to: (1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or (2) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(b) Except for the defined telecommunication services in subsection (c) of this section, a sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer’s place of primary use.

(c) The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunication service, other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer’s place of primary use, as required by the Mobile Telecommunications Sourcing Act.

(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either: The seller’s telecommunications system, or information received by the seller from its service provider, where the system used to transport the signal is not that of the seller.

(3) A sale of prepaid calling service is sourced in accordance with section fifteen of this article: Provided, That in the case of a sale of mobile telecommunication service that is a prepaid telecommunication service, the rule provided in subdivision (5), subsection (a), section fifteen of this article shall include, as an option, the location associated with the mobile telephone number.

(4) A sale of a private communication service is sourced as follows:
(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(B) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(C) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(D) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

§11-15B-20. Telecommunication sourcing definitions.

For the purpose of section nineteen of this article, the following definitions apply:

(1) “Air-to-ground radiotelephone service” means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) “Call-by-call basis” means any method of charging for telecommunications services where the price is measured by individual calls.
(3) “Communications channel” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(4) “Customer” means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under section nineteen of this article. “Customer” does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider’s licensed service area.

(5) “Customer channel termination point” means the location where the customer either inputs or receives the communications.

(6) “End user” means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

(7) “Home service provider” means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(8) “Mobile telecommunications service” means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(9) “Place of primary use” means the street address representative where the customer’s use of the telecommunication service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services,
“place of primary use” must be within the licensed service area of the home service provider.

(10) “Post-paid calling service” means the telecommunication service obtained by making a payment on a call-by-call basis, either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunication service. A post-paid calling service includes a telecommunication service that would be a prepaid calling service except it is not exclusively a telecommunication service.

(11) “Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(12) “Private communication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

(13) “Service address” means:

(A) The location of the telecommunications equipment to which a customer’s call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;
(B) If the location in paragraph (A) of this subdivision is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller’s telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller; or

(C) If the location in paragraphs (A) and (B) of this subdivision are not known, then “service address” means the location of the customer’s place of primary use.

§11-15B-30. Monetary allowances for new technological models for sales tax collection; delayed effective date.

(a) Monetary allowance under Model I. —

(1) The tax commissioner shall provide a monetary allowance to a certified service provider in Model I. This allowance shall be in accordance with the terms of the contract between the governing board of the streamlined sales and use tax agreement and the certified service provider. The details of this monetary allowance shall be developed and provided through the contract process. The contract shall provide that the allowance be funded entirely from money collected in Model I.

(2) The contract between the governing board and the certified service provider may base the monetary allowance to a certified service provider on one or more of the following:

(A) A base rate that applies to taxable transactions processed by the certified service provider, or

(B) For a period not to exceed twenty-four months following a voluntary seller’s registration through the agreement’s central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each
member state for which the seller does not have a requirement
to register to collect the tax.

(b) Monetary allowance for Model II sellers.— The
monetary allowance to sellers under Model II may be based on
the following:

(1) All sellers shall receive a base rate for a period not to
exceed twenty-four months following the commencement of
participation by a seller. The base rate is set by the governing
board of the streamlined sales and use tax agreement after the
base rate has been established for Model I certified service
providers. This allowance is in addition to any vendor or seller
discount afforded by each member state at the time.

(2) Following the conclusion of the twenty-four month
period, a seller will only be entitled to a vendor discount
afforded under each member state’s law at the time the base
rate expires.

c) Monetary allowance for Model III sellers and all other
sellers that are not under Model I or II.— A monetary allow-
ance to sellers under Model III and to all other sellers registered
under the agreement that are not sellers under Model I or II may
be allowed based on the following:

(1) For a period not to exceed twenty-four months follow-
ing a voluntary seller’s registration through the agreement’s
central registration process, a percentage of tax revenue
generated for a member state by the voluntary seller for each
member state for which the seller does not have a requirement
to register to collect the tax; and

(2) Vendor discounts afforded under each member state’s
law.
Prohibition on allowance or payment of monetary allowances.— Notwithstanding subsections (a), (b) and (c) of this section, the tax commissioner may not allow any vendor, seller or certified service provider any monetary allowance, discount or other compensation for collecting and remitting the taxes levied by articles fifteen and fifteen-a of this chapter, or for making and filing the periodic reports required by this article, or articles fifteen and fifteen-a of this chapter, until the cost of collection study required by the agreement is completed and the monetary allowances are based on the results of that study, or on requirements of federal law requiring remote sellers to collect sales and use taxes for states that have signed the agreement.

§11-15B-32. Effective date.

(a) The provisions of this article, as amended or added during the regular legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date and to all returns and payments due on or after that day, except as otherwise expressly provided in section five of this article.

(b) The provisions of this article, as amended or added during the second extraordinary legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date.

(c) The provisions of this article, as amended or added by this act of the Legislature, shall apply to all sales made on or after the date of passage of this act in the year two thousand four.

§11-15B-36. Relief from certain liability for state and local taxes.

(a) General.— Sellers and certified service providers registered under the streamlined sales and use tax agreement to
collect sales and use taxes imposed by this state or the economic opportunity development district excise tax imposed by a local jurisdiction of this state who charged and collected the incorrect amount of sales or use taxes or district excise taxes resulting from the seller or the certified service provider relying on erroneous data provided by this state on tax rates, boundaries or taxing jurisdiction assignments shall be held harmless by the tax commissioner and the local taxing jurisdiction.

(b) *Exception.*—A state that is a member of the streamlined sales and use tax agreement and provides an address-based system for assigning taxing jurisdictions pursuant to subdivision (4), subsection (d), section thirty-five of this article, or pursuant to the federal Mobile Telecommunications Sourcing Act, is not required to provide liability relief for errors resulting from reliance on information provided by the member state under subdivision (3), subsection (d), section thirty-five of this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Originating in the House.

In effect from passage.

The within is approved this the  __th  
day of  ___, 2004.

Governor